IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20/08/2003

Coram

THE HON'BLE MR. JUSTICE M. KARPAGAVINAYAGAM
And
THE HON'BLE MR. JUSTICE S. ASHOK KUMAR

CRIMINAL APPEAL No.1161 of 2000

1. Chandrasekaran
2. Rathinam
3. Lakshmi .. Appellants

-Vs-

State: Rep. by
Inspector of Police
Lalgudi Police Station
Trichy District
(Crime No.1675/98) ..Respondent

Criminal Appeal against the judgment dated 22.11.2000 in S.C.No.61 of 2000 on the file of the II Additional Sessions Judge, Tiruchirappalli.

!For Appellant : Mr. S.Ashok Kumar for
Mr.M.S.Kandasamy

^For Respondent: Mr.E.Raja, Addl. P.P.

:JUDGMENT

M. KARPAGAVINAYAGAM, J.

Vanitha, a bride in her incipient twenties was stamped (trampled) to death by her husband Chandrasekaran at her nuptial home. After she was done away with, the husband tied the saree around the neck and suspended the body by tying the other end with the rafter of the roof. He thereupon began to cry along with his father Rathinam and mother Lakshmi as if she committed suicide. Then, her body was removed from the rafter with the help of neighbours. Thereafter, the deceased was put in a chair tying her with the chair by means of a rope to ensure that the body does not fall on the ground. After giving information to the parents of the deceased that she died, all the three

accused persons, namely husband, father-in-law and mother-in-law of the deceased left the village and absconded. The motive for the unfortunate occurrence is that the dowry demands such as cow, goat and TVS 50 (jiyg;bgh';fy; rPh;thpir) were not met by the parents of the deceased.
2. On these allegationsw, all the three persons, namely Chandrasekaran, husband (A1), Rathinam, father-in-law (A2) and Lakshmi, motherin-law (A3) were tried for the offences under Sections 498-A, 304-B, 30 2 and 302 read with 201 I.P.C. However, the trial Court acquitted A2 and A3 in respect of the charge under Section 302 I.P.C. and convicted them for the offences under Sections 498A, 304-B and 302 read with 201 I.P.C. A1 Chandrasekaran was convicted for all the offences under Sections 302, 498-A, 304-B and 302 read with 201 I.P.C. Challenging the above conviction, A1 to A3 have filed this appeal.

3. The short facts leading to the conviction are summarised as follows:
"(a) The deceased Vanitha is the wife of A1 Chandrasekaran. A2 Rathinam is the father and A3 Lakshmi is the mother of A1. P.W.1 Arumugam and P.W.2 Chinnammal are the parents of the deceased Vanitha.

(b) In the year 1997, the deceased Vanitha got married to A1 Chandrasekaran. The parents of the deceased were residing in Woraiyur near Trichy. After marriage, the deceased Vanitha was living along with her husband (A1), A2 father-in-law and A3 mother-in-law as a joint family in the village Anbil Mangammalpuram.

(c) Within a few months, she got conceived. During that period, the first Pongal intervened. A2 and A3, the parents of A1 insisted P.Ws.1 and 2, the parents of the deceased to give "Thalai Pongal Seervarisai", such as cow (rPik gR), goat and TVS 50. P.W.1 assured that he would give those articles after birth of the child.

(d) After "Valaikappu" function held in the ninth month, P.Ws.1 and 2 took the deceased to their house and admitted her in Srirangam Hospital. A male child was born. Then, the deceased along with the child was taken to the house of the accused.

(e) The accused began to insist for the Thalai Pongal Seervarisai, which was assured to be given after birth of the child. For this purpose, the deceased was sent to the house of her parents to collect those seervarisai articles even without the child. Thereafter, at the intervention of the employer, the deceased joined her husband. P.W.1 assured that he would give the Pongal Seervarisai soon.
(f) Since the Pongal Seervarisai articles were not given as agreed, the deceased was again sent with the child to her parents' house within a few months. P.W.1 expressed his inability. Therefore, the deceased with the child stayed in P.W.1's house for some days.

(g) Then, A1 came to the house of the parents of the deceased and forcibly

took her with the child to his house. Since seervarisai articles were not given as promised, the torture continued.

(h) The deceased sent letter to P.W.1 informing the torture and asking P.W.1 to come and take her. P.W.1 and others went to the village and made an attempt to take her to the house. But, she was not allowed to go with them.

(i) Within a few days, i.e. on 9.11.1998 at about 10.45 p.m., two persons belong to Anbil Mangammalpuram village came to Woraiyur and informed the parents of the deceased that the deceased died at the village.

(j) Immediately, they arranged a Taxi and went to the village. They found the body of the deceased seated in a chair. Nobody was available in the house. A1 to A3 were found absconding.

(k) Therefore, on 10.11.1998 at about 6.00 a.m., P.W.1 gave a complaint to P.W.12 Sub Inspector of Police, Lalgudi Police Station. The case was registered under Section 174 Cr.P.C. Intimation was sent to the Revenue Divisional Officer and the Deputy Superintendent of Police.

(l) P.W.10 R.D.O. came to the scene and conducted inquest. He examined P.W.1, P.W.2 and others. The accused persons were not available. Then, P.W.10 sent a report to the police stating that the death was due to dowry torture and the accused were absconding.

(m) P.W.9 Dr. Gandhi conducted post-mortem on the same day and found injuries on the neck and in the small intestines. He gave opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained in the small intestines.

(n) On the basis of this opinion, P.W.14 D.S.P. who took up investigation, altered the case into one under Section 302 I.P.C.

(o) On 2.2.1999, P.W.13 Inspector of Police on the supervision of P. W.14 D.S.P., arrested A1 to A3.

(p) After completion of the investigation, P.W.14 D.S.P. filed the charge sheet against the accused under Sections 498A, 304B and 302 I.P.C."

4. During the course of trial, on the side of prosecution,P.Ws.1 to 1 4 were examined, Exs.P1 to P17 were filed and M.Os.1 to 8 were marked.

5. The accused were questioned under Section 313 Cr.P.C. They denied their complicity in the crime. A1 filed a statement that on 9.11.1998 , he came back to the house after shopping in the evening and he found that his wife, the deceased hanging herself inside the house by means of a saree as she felt insulted when the village people objected to her act of having thrown thagadu, viboothi and lemon on the road side. On the side of the defence, D.W.1 was examined. According to him, on 9.11.1998 evening 5 O' clock, A1 came out of his house crying that his wife hanged herself inside the house. Therefore,

neighbours removed the body from the rafter of the roof and put the body in a chair and performed the ceremonies. As instructed by A1, he went and informed P.Ws.1 and 2 at Woraiyur that their daughter committed suicide by hanging herself. The parents of the deceased got angry and arranged to come to the village along with dangerous weapons. D.W.1 came and informed this to the accused. Fearing the attack, A1 absconded. A2 and A3 were present in the village. There was no beating and torture on the deceased by the accused.

6. The trial Court convicted A1 for the offences under Sections 498A, 304-B, 302 and 302 read with 201 I.P.C. and while acquitting A2 and A3 for the offence under Section 302 I.P.C., convicted them for the offences under Sections 498-A, 304-B and 302 read with 201 I.P.C. and sentenced thereunder. Challenging the same, all the three accused have filed this appeal.

7. Assailing the judgment impugned, Mr.Ashok Kumar, the learned counsel for the appellants would make the following submissions:

"The conviction under Section 302 I.P.C. on the first appellant (A1) is not legal as there is no material to show that A1 has caused the death of the deceased. P.W.1 gave complaint entertaining suspicion on the death of the deceased and stating that the deceased committed suicide due to the torture by the accused. P.Ws.1 and 2 do not give any direct evidence with reference to the act of murder by the accused. P.W.9 Doctor in the cross-examination would admit to a certain extent that the death would have been caused by suicide. The letters Exs.P1 to P3 stated to have been written by the deceased to P.W.1, were not handed over by her father either to the Sub Inspector of Police P.W.12, at the time when the complaint was lodged or to the R.D.O. P.W.10 at the time of enquiry. Admittedly, they were seized only on 24.11 .1998, i.e. after about 14 days. P.W.14 D.S.P., the investigating officer did not take steps for comparison of the handwriting of the deceased through the Experts. Therefore, Exs.P1 to P3 must have been fabricated belatedly to implicate the accused. When the offence under Section 302 I.P.C. is not made out, automatically the offence under Section 302 read with 201 I.P.C. also is not made out. There is no evidence that soon before the death of the deceased, there was any torture on the ground of demand of dowry. The alleged Pongal Seervarisai cannot be termed to be dowry as it would not satisfy the requirement of definition of dowry as mentioned in Section 2 of the Dowry Prohibition Act. Things which are given as gifts are only customary gifts and as such, they cannot be termed to be dowry. Consequently, the offence under Section 304-B I.P.C. is not proved. Similarly, the offence under Section 498-A I.P.C. would also not get attracted as there are no materials to show that the deceased was subjected to cruelty for unlawful demand. Consequently, all the accused are entitled to be acquitted."

8. To substantiate the above points, the learned counsel would cite a number of authorities.

9. In reply to the above submissions, Mr.E.Raja, the learned Additional Public Prosecutor would refer to several portions of the oral and documentary evidence adduced by the witnesses and contend that the conviction imposed upon the accused for the offences referred to above are perfectly legal. He would also cite several authorities.

10. We have carefully considered the submissions made by the counsel for the parties and gone through the entire records.

11. Before adverting to the merits of the respective contentions made by the counsel for the parties, it would be better to refer to the chronological events which have been shown by the prosecution through the materials leading to the filing of the case against the accused. Those events are as follows:

(A) P.W.1 Arumugam is a retired Assistant in Veterinary Hospital. He is staying along with his wife P.W.2 Chinnammal at Woraiyur near Trichy. He has got three daughters and three sons. The deceased Vanitha is his second daughter. With the help of P.W.4 Maruthai who was working in the Veterinary Hospital along with him, P.W.1 was able to arrange the marriage of his daughter Vanitha with A1 Chandrasekaran. Rathinam (A2) is his father and Lakshmi (A3) is his mother. They were residing in Anbil Mangammalpuram.

(B) As fixed by the elders, on 8.1.1997, the marriage between the deceased Vanitha and A1 Chandrasekaran was performed in Periyar Mandapam, Lalgudi. At the time of marriage, the parents of the deceased, namely P.Ws.1 and 2 gave 3 sovereign Necklace, 1 sovereign Ear-stud and Jimicki and nose-screw and silver Kolusu to bride and 1 + sovereign chain and + sovereign ring to bridegroom and cot, bed, iron bureau, wet-grinder, ever-silver and brass vessels and other house-hold articles as stridhan properties.

(C) After marriage, the deceased Vanitha lived with her husband (A1) in the joint family along with A2 Rathinam, father-in-law and A3 Lalshmi, mother-in-law in the house at Anbil Mangammalpuram village. The accused persons owned two houses in the village. Though initially they were staying in one tiled house along with A2 and A3 as a joint family, some months later, A1 husband and the wife, the deceased occupied the other house, a hut, just opposite to the tiled house by setting up a separate family. Thereafter, she became pregnant.

(D) When she was seven months pregnant, Thalai Pongal came. The accused when asked about Thalai Pongal Seervarisai articles such as cow, goat and TVS 50, P.Ws.1 and 2, the parents of the deceased told the accused that they were advised by the well-wishers that it was not a good omen to give the said "Thalai Pongal Se ervarisai" during the pregnancy period of their daughter and therefore, they promised that they would give those articles after the birth of the child. Though A2 and A3 insisted that seervarisai should be given during the Pongal period only, P.W.1 requested and told them that he would be able to mobilise money only after some time and therefore, they could wait till the delivery of the child.

(E) In the 9th month, there was Valaikappu function held in the house of the accused. After Valaikappu, the deceased was taken to the house of P.W.1 for the purpose of delivery. As desired by the accused, P.W.1 admitted the deceased in the Pankajam Hospital at Srirangam. A male child was born. After discharge from the hospital, the deceased and child were taken to the house of P.W.1. After a week, A1 to A3 came to Woraiyur and asked P.Ws.1 and 2 to send the deceased and child with them to go to their house. When P.W.1 said that

he would do Punniyathanam and put some jewels on the child and send them after three months, the accused insisted that they must be sent immediately along with them as they themselves would do Punniyathanam in their house. Since the accused highly insisted, P.Ws.1 and 2 sent the deceased with the child along with the accused persons after putting some jewels on the child.

(F) After one week, P.W.1, P.W.2 and their neighbour P.W.5 Jothi went to the accused house at Anbil Mangammalpuram and requested them to send the deceased and child to their house. This time, the accused refused to send them with P.Ws.1 and 2 stating that the Thalai Pongal Seervarisai, such as cow, goat and TVs 50 were not given even after the delivery as assured by them. Therefore, P.W. 1 and others had to return home.

(G) One week later, the deceased alone came to Woraiyur without the child. She told her parents P.Ws.1 and 2 that she was sent alone by A1 to A3 to collect the Thalai Pongal Seervarisai from them without allowing her to take the child with her. P.W.1 taking this as a serious one, went to Anbil Mangammlpuram village along with the deceased and well-wishers and complained to the employer under whom A1 was working about the conduct of the accused. Then, A1 was summoned. As soon as A1 came to the employer's house, on seeing the deceased standing there, he beat the deceased in his presence. However, the employer objected to his act stating that he should not beat her in his presence, that too, when she was in his house. Then, he advised P.W.1 to give the Thalai Pongal Seervarisai as agreed soon. Then, as instructed by the employer, the deceased was left in the house of the accused. P.W.1 assured that he would give the Thalai Pongal Seervarisai as soon as he gets the money and went back to their village.

(H) Within some weeks thereafter, the ear-boring ceremony was performed for the child of one Chitra, another daughter of P.W.1. Since P. W.1 did not give adequate stridhana articles at the time of her marriage, in this ceremony, he gave cot, chain, etc. This was noticed by A1 to A3 who attended the ceremony. After returning back to their village, the accused insisted the deceased to go to her parents' house and collect the Thalai Pongal Seervarisai, such as cow, goat and TVS 50 stating that P.Ws.1 and 2 have got the money (retirement benefits). This time, she was allowed to go with the child to the parents' house. She came with the child and informed her parents P.W.1 and P.W.2 about the beating and torture at the hands of the accused over the demand of the Pongal Seervarisai. The deceased was asked to stay for some days. Accordingly, the deceased along with her child stayed. Two days later, A1 came and asked the deceased as to why she was continuously staying there without collecting the seervarisai articles from the parents of the deceased. Then, he asked the wife to come along with him on that day itself to go to his village. She stated that she was not well and was taking medicine and therefore, she would come later. A1 got angry and snatched the child from her and caught the child by his legs and lifted upwards. He threatened the deceased and P.Ws.1 and 2 and others that if she does not come with him, he would drop the child in the ground. Fearing the death of the child, P.Ws.1 and 2 sent the deceased and child along with A1. Even after arrival in the village, the beating and torture on the deceased at the hands of A1 continued on the reason that the Thalai Pongal Seervarisai articles were not given by

the parents of the deceased as promised.
(I) Unable to bear the same, the deceased Vanitha sent an Inland letter Ex.P1 along with two pieces of paper Exs.P2 and P3 through post on 25.8.1998 to P.W.1 informing that she was indiscriminately beaten and tortured by the accused and so, he must immediately come to village with elders and take her to his house, or arrange for the seervarisai articles to be given to the accused, otherwise she would be done to death. On receipt of the letter, P.W.1 and P.W.3 Pakkirisamy, a neighbour went to the village Anbil Mangammalpuram in order to bring her from the village. They asked the accused to send the deceased with them as the mother of the deceased was in a serious condition. However, the accused party did not incline to send her with them stating that they would later come and visit the hospital in which the mother of the deceased was admitted. When the deceased got into the car to go to the village Woraiyur at the insistence of P.W.1 and P.W.3, A1 husband and A3 mother-in-law objected to the deceased getting into the car to go to their house and A1 went near the car and caught hold of the tuft of the deceased and pulled her down from the car. Having failed in their attempt to take the deceased with them, P.W.1 and others simply returned to Woraiyur empty handed. This happened just few days before the fateful occurrence.
(J) On 9.11.1998 at about 10.45 p.m., two persons came to the house of P.Ws.1 and 2 at Woraiyur claiming themselves that they are coming from Anbil Mangammalpuram village and informed them that the deceased died in the village. When P.Ws.1 and 2 asked about the cause of death, they did not reply and simply went away. Immediately thereafter, P.W.1 Arumugam, his wife P.W.2 Chinnammal and other neighbours arranged a Taxi at about 11.30 p.m. and left Woraiyur and proceeded to the village. They reached the village midnight at about 2.00 a.m. on 10 .11.1998. When they went to the accused house, nobody was available. The dead body of the deceased was found seated in a chair and tied with a rope in front of the house of the accused. When the neighbours were enquired about A1 to A3, they could not give any information about their whereabouts. They found injuries on both the legs and on the neck of the deceased.

(K) Suspecting that it was suicide, on 10.11.1998 at about 6.00 a.m., P.W.1 went to the Lalgudi Police Station and gave a complaint Ex.P4 to P.W.12 Sub Inspector of Police mentioning the details of the torture over the demand of dowry and the suspicion that the deceased might have committed suicide due to the said reason. On receipt of the said complaint, P.W.12 registered a case in Crime No.1675/98 under Section 174 Cr.P.C. as suspicious death. Since the death of the deceased was within seven years of marriage, P.W.12 sent Ex.P4 complaint and Ex.P13, the printed F.I.R. to the Revenue Divisional Officer (P.W.10) and the copies to the Deputy Superintendent of Police (P.W.14).

(L) On receipt of the F.I.R., P.W.14, the D.S.P. on 10.11.1998, took up investigation. He went to the scene at 9.00 a.m. and prepared observation mahazar Ex.P5 and drew rough sketch Ex.P14. He examined the witnesses.

(M) P.W.10 Krishnan,the R.D.O. came to the spot at 1.00 p.m. on 10.11 .1998 and conducted inquest by examining P.W.1, P.W.2 and the local villagers. He also noted down injuries found on the body of the deceased. He tried to get at A1 to A3 to record their statement. But, they were not available as they

absconded. So, on the basis of the available statements and the inquest report, P.W.10 sent report Ex.P11 to the police mentioning about the absence of A1 to A3 and stating that the death of the deceased must have been due to dowry torture at the hands of the accused. The inquest report is Ex.P12. He also sent Ex.P6 requisition to the Doctor to conduct post-mortem.

(N) P.W.14, after receipt of the report Ex.P11 from P.W.10 R.D.O. continued the investigation and examined the witnesses. On 24.11.1998, he recovered the letter Exs.P1, P2 and P3 written by the deceased to P.W.1 mentioning the torture at the hands of A1 to A3. He altered the case registered under Section 174 Cr.P.C. into one under Sections 49 8-A and 304-B I.P.C. and continued the investigation.

(O) P.W.9 Dr. Gandhi conducted post-mortem on 10.11.1998 at about 4.0 0 p.m. and found the injuries on the neck and the legs. On dissection, he also found injuries in the small intestines. After verification of the viscera report and hyoid bone report, P.W.9 gave final opinion Ex.P10 in the post-mortem certificate Ex.P8 that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained in the small intestines.

(P) On the basis of the final opinion Ex.P10 given by the Doctor P.W.9 stating that the deceased would appear to have died of injuries sustained in the small intestines, the case was further altered into one under Section 302 I.P.C. Then, further investigation was entrusted to P.W.13 Inspector of Police. He took steps to arrest A1 to A3. Ultimately, on 2.2.1999, P.W.13 arrested A1 to A3 and sent them to judicial custody. The material objects were arranged to be sent for chemical analysis. After completion of the investigation, P.W.14 filed the charge sheet against the accused.

12. In the trial Court, the charges were framed against all the accused under Sections 498-A, 304-B, 302 and 302 read with 201 I.P.C.

13. Among the chronological facts, the undisputed facts are the following:
(1) At the time of marriage on 8.6.1997, seervarisai articles like necklace and other jewels for bride, the deceased and gold chain and ring for bridegroom, the first accused and other household articles were given by P.Ws.1 and 2.

(2) After the marriage, the deceased was staying with her husband in a joint family along with A2 father-in-law and A3 mother-in-law in a tiled house for a few months. Thereupon, A1 and the deceased were allowed to put up a separate family by staying in the hut which was situated in front of the tiled house.

(3) After Valaikappu function at the house of the accused, the deceased was taken to the house of P.Ws.1 and 2 and from there, P.W.1, the father took the deceased and admitted in the Srirangam hospital for delivery as desired by the accused persons and the child was born there only.

(4) The deceased died in the evening of 9.11.1998 in the hut, where

the deceased and A1 alone were living together. The intimation was sent through the villagers by A1 to P.Ws.1 and 2 regarding the death of the deceased.

(5) On receipt of intimation, P.Ws.1 and 2 and others came to the village at about 2.00 a.m. and saw the dead body of the deceased with injuries seated in a chair in the pial of the house of the accused. At that time, A1 to A3 were not present.

(6) Next day, a complaint was given to P.W.12 Sub Inspector of Police. P.W.10 R.D.O. came and conducted enquiry on 10.11.1998. P.W.14, the D.S.P. also came and examined the witnesses in the village. During this time also, all the accused were not available in the village for enquiry.

(7) They did not turn up to the village for about three months. The case was booked under Section 174 Cr.P.C. and altered the case against A1 to A3 for the offences under Sections 498-A, 304-B and 302 I. P.C. and steps were taken to arrest them. But, they were not available. Ultimately, they were arrested only on 2.2.1999 after nearly 3 months by P.W.13 Inspector of Police.

14. In the light of the above factors which are not in dispute, we have now to evaluate the evidence available adduced by the prosecution.

15. The evidence of P.W.1, the father of the deceased would give the details of the chronological events as given in the earlier paragraphs. According to him, when Thalai Pongal came after the marriage, the accused insisted that they must give the Pongal Seevarisai articles. Since the deceased was pregnant at that time, he requested the accused to wail till the birth of the child.

16. After the child was born, they began to insist that the said Pongal seervarisai must be given to the accused. Though the parents of the deceased, P.Ws.1 and 2 put some jewels on the child, they were not able to meet the demand of Pongal Seervarisai as they were not financially sound at that time. Therefore, they sought time. When the accused sent the deceased alone to Woraiyur even without the child in arms to collect the Pongal Seervarisai, P.W.1 and others went to the village and complained the matter to the employer under whom A1 was working. Then, at the intervention of the employer, the deceased was allowed to join with the husband. P.W.1 assured that he would arrange to get the seervarisai within a short time.
17. Some time later, the accused insisted the deceased to go to Woraiyur and to collect the Thalai Pongal Seervarisai articles as agreed earlier. This time, she came with the child. Even then, P.W.1 could not meet the demand and consequently, the deceased had to stay for some more days in the house of her parents.

18. On finding that the deceased did not turn up, A1 himself came to Woraiyur and asked her to come back to the village. When she felt reluctant, he caught hold of the child by his legs and lifted upwards and threatened the deceased and her parents that if she does not come, he would kill the child.

Under those circumstances, P.Ws.1 and 2 sent the deceased along with child with A1.

19. Again the torture and beating continued. Unable to bear the torture, the deceased wrote letters Exs.P1 to P3 complaining about the torture and requested P.W.1 either to give the cow, goat and TVS 50 or to take her with them, or else she would certainly be killed. On receipt of the letter, P.Ws.1, 2 and 3 went to the village in order to bring her to their home. They attempted to take the deceased in the car. But, A2 and A3 objected to the deceased going with her parents. A1 caught hold of the tuft of the deceased who was sitting in the car and pulled down from the car. Thus, the attempt to save her from the cruel hands of the accused got foiled.

20. Within a few days, i.e. on 9.11.1998, P.W.1 got the information that the deceased died. P.W.1 Arumugam, P.W.2 his wife Chinnammal, P.W.3 Pakkirisamy and others went to the village and found the dead body of the deceased in the chair with a rope tied over the body with the chair and injuries on the neck and legs. Accused persons were found absconding. Then, a complaint was given.

21. This aspect of the evidence has been clearly spoken to by P.W.1, P.W.2, his wife, P.W.3 and P.W.5, the neighbours of P.W.1.

22. P.W.3 Pakkirisamy is a resident of Woraiyur having his house next to the house of P.W.1. He is aged about 65 years. The perusal of the deposition given by P.W.3 both in chief and cross would reveal that P.W.3 would corroborate the evidence of P.W.1 with reference to the important circumstances as against the accused. He would refer to the incident where A1 came to Woraiyur and threatened the deceased to come with him along with the child, or else he would kill the child. According to him, on seeing this incident, he only intervened and pacified both the parties and arranged for sending the deceased along with her husband (A1). He would also refer to the next incident where all of them on receipt of the letter from the deceased complaining about the torture, went to the village and made an attempt to take the deceased along with them and when she got into the car, A1 and A3 did not allow her to go to Woraiyur and A1 beat her and both of them pulled her out of the car. He would also refer to the fact that on 9 .11.1998 night, he went to the village and saw the dead body of the deceased with injuries and the accused were not available. There is no serious challenge to his evidence in the cross-examination. As a matter of fact, no suggestion was put to him with regard to the defence theory. In such circumstances, there is no reason shown to reject his evidence.

23. P.W.5 Jothi, a woman is also residing in Perumal Koil Street at Woraiyur wherein the house of P.W.1 is situated. She is aged about 31 years and she belongs to some other caste. The deposition of P.W.5 would indicate that P.W.5 as a family friend would closely move with the deceased and P.W.1. In fact, she attended the marriage between the deceased and the first accused held at Lalgudi. She also would speak to the fact that within a year when the deceased was pregnant, the accused demanded Pongal Seervarisai and P.W.1 did not arrange to give the seervarisai as he was advised so. Thereafter, the

torture continued. About this torture, the deceased herself when she came to Woraiyur told P.W.5 Jothi. She would also refer to the other incident wherein A1 came to Woraiyur and threatened the deceased that he would kill the child, if she does not come with him to the village. P.W.5 would further refer to the letter written by the deceased to P.W.1. On the date of the death, P.W.5 also accompanied the others to the village where she found the deceased with injuries and the accused were not available then. To this witness also, no suggestion was put with regard to the defence theory of the accused. The close scrutiny of the evidence of P.W.5 would indicate that she also is a truthful witness. Thus, it is clear that the evidence of P.Ws.3 and 5 who are independent witnesses would amply corroborate the evidence of P.W.1 in all the material particulars.

24. In the complaint Ex.P4 given by P.W.1, he would specifically mention that since the demand of Thalai Pongal Seervarisai, namely cow, goat and TVS 50 was not met by P.W.1, all the three accused used to beat and torture the deceased. This complaint was given on 10.11.1998 and the same was

registered at about 8.15 a.m. under Section 174 Cr.P.C. and the F.I.R.Ex.P13 along with the complaint Ex.P4 were sent to P.W.10, the Revenue Divisional Officer, Lalgudi.

25. Apart from the fact that the torture relating to the dowry demand has been mentioned in Ex.P4 complaint, both P.W.1 Arumugam and P.W.2 Chinnammal, the parents of the deceased have given detailed statement on the same day, i.e. on 10.11.1998 to the R.D.O. P.W.10, who examined them during the course of inquest as evident from Exs.P11, the enquiry report and P12, the inquest report, which were prepared in the presence of the local residents of Anbil Mangammalpuram, relating to the demand of seervarisai articles such as cow, goat and TVS 50 and the torture meted out to the deceased by the accused leading to the death of the deceased. Thus, it is evident that in the earliest documents Exs.P4, P11 and P12, it has been clearly stated that the deceased was constantly tortured by the accused persons over the demand for Thalai Pongal Seervarisai articles.

26. As a matter of fact, P.W.1 at the time of lodging the complaint did not think that it was a case of murder. He entertained only suspicion over the death of the deceased thinking that she might have committed suicide due to dowry torture. That was the reason why P.W.12 Sub Inspector of Police registered the case under Section 174 Cr.P.C. on receipt of the complaint Ex.P4 for suspicious death. After the inquest by P.W.10 R.D.O., the case was altered into one under Sections 498-A and 304-B I.P.C. on coming to know that it was the case of dowry death.

27. P.W.9 Doctor conducted post-mortem and issued post-mortem certificate Ex.P8 mentioning the injuries on the body as well as in the small intestines. At that time, P.W.9 did not give final opinion regarding the cause of death. But, after getting the viscera report and the report relating to hyoid bone, P.W.9 and another Doctor gave final opinion in Ex.P10 that the deceased died due to the injuries sustained in the small intestines. Only on the basis of the said opinion given by two Doctors, who conducted post-mortem,

viz., Dr.P.R. Subramanian and P.W.9 Dr.Gandhi, P.W.14 thereupon added Section 302 I.P.C. and sent the alteration report to the court.

28. The very vital and important document in this case is the letter written by the deceased to P.W.1, her father, a few weeks prior to the date of death mentioning the dowry torture at the hands of the accused. The receipt of the letter and contents of the same have been referred to by P.W.1 in the complaint Ex.P4 itself. Some of the portions of Exs.P2 and P3, the letters are as follows:

"vd; fzthplk; xU thukhf khl;il gj;jp gjpy; brhy;ytpy;iy/ xU thuk; fHpj;J vd;dplk; nfl;lnghJ ehd; nfl;ftpy;iy vd;W brhd;ndd;/ clk;g[Koahky; ,Ue;jnghJ bfh";rk; Tl ,uf;fkpy;yhky; moj;j mo bfh";rk; e";rkpy; iy/
(I did not give reply to my husband about the cow for a week. When I was asked after a week, I stated that I did not ask. Though my body was weak, he beat me severely and mercilessly.)

vd;id bjU bjUthf brd;W ehw mor;rpl;lhd;/
(He tarnished my name everywhere.)

---

vdf;F me;j khL tutpy;iy vd;why; elf;fpwnj ntnw/ nghd tU&k; jnud; brhd;dy. vjdhy me;j khL. Ml;Lf;Fl;o jutpy;iy vd;whd;/ eP jhyp mWg;gJ epr;rak;/
(He threatened that "If the cow was not given, anything may happen. Why the cow as well as goat was not given as promised last year?" He further warned that "It is certain that you will lose your Thali(Mangalya Sudra)".)

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vd; g[s;is Tl mtjhd; tr;rpUf;fh/ vd;dpa mof;ft[k; me;j njtoahs; nrh;e;Jfpl;L mtDk; ngrpaJ bfh";rk; e";rkpy;iy/ kapj;j gpoj;J btspna js;Slh brhy;yt[k;. mtDk; vd;id kapj;ij gpoj;J moj;j mo bfh";rk; e";rkpy;iy/
(My baby son is also with the mother-in-law. My husband joined with my mother-in-law (a prostitute like) in scolding and beating me. On her saying to neck me out, he caught hold of my tuft and beat me severely and repeatedly.)

---

vd;d rPU thpir br";r. bgh';fYf;F ghh;j;Jfpnwd;/ vd; g[U&Dk; vd; khkpahUk; ngRuh';f/ ehd; thHth ,y;iyah. mtdplk; mo th';fpna rhfth/ xt; bthU epkplk; mtdplk; mo th';fp rhfpnwd;/
(My husband and my mother-in-law shouted at me as to what stridhan was offered for the Pongal. My husband and my mother-in-law always abuse and scold me. Could I live with him or could I die in his hands? I am dying every minute by his beatings.)

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mtd; nehf;fk; gzk; btwp vLj;J miyfpwhd;/ mtd; ngRtJk;/ va;j;J nfl; lhy; mo cijjhd; kpr;rk;/ vJf;bfLj;jhYk; ek;k FLk;gj;ij gj;jp buhk;g nftykh ngRwhd;/ vJf;bfLj;jhYk; mo cij/ vd;dpahy; jh';f Koatpy;iy/
(His motive is for money and is mad after money. He scolds me ever. When I retort, the only thing I get his beatings and kickings. Every time, he is making highly damaging and derogatory remarks about our family. For each and everything I get beatings and kickings. I am unable to endure this.)

,ij vGJk; nghJk; mGJbfhz;L vGJfpnwd;/ ePa[k; fz;Lf;fhky; ,Ue;jhy; ehd;

rht[wJ jhd; kpr;rk;/ vd;id Tl;o ngha;tpL/
(Even while I am writing this, I am weeping. If you do not care for me any more, I will definitely die. Please take me to your place.)
---
cdf;F mJ jhd; tpjp vd;why; mtd; nfl;lJ nghy; me;j khl;ila[k;. Ml; ila[k; Tl;otpL/ ,y;iy vd;why; vd;id Tl;o ngha;tpL/
(If you think that this is my fate, give the cow and goat to my husband as he demanded, or else please come and take me back.)

,e;j yl;lh; fz;lt[ld; mf;fiw ,y;yhky; ,Uf;fhnj. Kot[cd; ifapy;. ehd; thH;tJk; rhtJk;/
(Don't be indifferent even after seeing this letter. Whether I am to live or to die is in your hand.)

,e;j yl;liu vGJk;nghJ mtDf;F bjhpahky; vGJfpnwd;/ fpuhkj;J Ml;fs; itj;J vd;id Tl;o ngha;tpL/
(I am writing this letter without his knowledge. Please come and take me with the help of the village people.)

The reading of the above letter would clearly indicate that she was being tortured over the demand of the seervarisai articles, such as cow, goat and TVS 50 by the accused and she cautioned her parents that if the same was not given, she would have to die at the hands of the accused. Ultimately, as the demand was not met, she had to meet the death at the hands of the accused.

29. These materials projected by prosecution through oral and documentary evidence would clearly indicate that there was a constant torture meted out to the deceased by the accused, which resulted in the death of the deceased.

30. According to the prosecution, it is a case of murder under Section 302 I.P.C. and in any event, it is a dowry death attracting both Sections 304-B and 498-A I.P.C. The case of the defence is that on 9.11.1998, the deceased had thrown sorcerous (ke;jpuk; bra;ag;gl;l) lemon, viboothi and copper plate on the road side and objecting to this, she was condemned and insulted by the villagers and unable to bear the insult, she hanged herself by means of her saree in the hut.

31. The main thrust of the argument advanced by the counsel for the appellants is that there are no sufficient materials, which would attract the offences under Sections 304-B, 498-A and 302 I.P.C. It is contended by the counsel for the appellants, giving of customary gift or payment in connection with birth of child or several ceremonies like Pongal unrelated to the marriage ceremony do not fall within the ambit of "dowry" and voluntary presents given at or before or after the marriage to the bridegroom of a traditional nature, would not fall within the mischief of the expression 'dowry' made punishable under the Act and as such, offences under Sections 304-B and 498-A I.P.C. are not made out. He would further contend that when there is no material to show that there was a demand of dowry soon before her death, Section 304-B would not get attracted. He would cite the decisions in S. GOPAL REDDY v. STATE OF A.P. (1996 S.C.C. (Cri) 792) and SATVIR SINGH

v. STATE OF PUNJAB (2002 S.C.C.(Cri) 48).

32. Before dealing with the offence relating to the murder, let us now deal with the argument mainly advanced with reference to the offence under Section 304-B I.P.C.

33. Section 304-B I.P.C. reads as follows:
"304-B. Dowry death: (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation: For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.
(2) ...."

34. The above section lays down that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called "dowry death". As per the explanation to the section, the meaning of the dowry has been defined in Section 2 of the Dowry Prohibition Act. This is as follows:
"2.Definition of "dowry": In this act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--
(a) by one party to a marriage to the other party to the marriage; or
(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."
This section explains the definition of Dowry stating that any property or valuable security given or agreed to be given by one party to another party in connection with the marriage of the said parties.
35. Keeping in view the object of these sections, a new Section 113 -B was introduced in the Evidence Act to raise a presumption as to dowry death. It reads as under:
"113-B. Presumption as to dowry death: When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.
Explanation: For the purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code."

36. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove the following essentials:
(1) The death of a woman should be caused by burns or bodily injury or

otherwise than under normal circumstances;
(2) Such death should have occurred within seven years of her marriage;
(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
(4) Such cruelty or harassment should be for or in connection with demand for dowry; and
(5) To such cruelty or harassment the deceased should have been subjected soon before her death.

37. As and when the aforesaid essentials are established, a presumption of dowry death shall be drawn against the accused under Section 1 13B of the Evidence Act.

38. In relation to dowry death, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand of dowry is shown to have persisted, it shall be deemed to be "soon before death".

39. It is hence for the Court to decide, on the facts and circumstances of each case, whether the said interval was sufficient to satisfy the concept of "soon before her death".

40. In the light of the above principles laid down in SHANTI v. STATE OF HARYANA (1991 S.C.C.(Crl.) 191, STATE OF H.P. v. NIKKU RAM (A.I.R.1996 S.C.67), KANS RAJ v. STATE OF PUNJAB (2000 S.C.C.(Crl.) 935 and SATVIR SINGH v. STATE OF PUNJAB (2002 S.C.C.(Crl.) 48), we have to see whether all ingredients contempla ted under Section 304-B, I.P.C. have been satisfied.

41. According to the counsel for the appellants, there was no demand of dowry and the Pongal gift cannot be termed to be a dowry and that too, in the absence of the materials to show that there was demand soon before her death, Section 113-B of the Evidence Act would not give rise to any presumption as to dowry death.

42. The conjoint reading of Section 304-B I.P.C. and Section 113-B of the Evidence Act would show that the prosecution has to prove that death has occurred within seven years of marriage and she must have been subjected to cruelty in connection with demand for dowry soon before her death and the death should be caused by burns or bodily injury or otherwise than under normal circumstances.

43. In this case, we have to first decide whether the demand of Pongal Seervarisai articles would attract the ingredients of definition of dowry.

44. As referred to above, the definition of term "dowry" under Section 2 of the Dowry Prohibition Act shows that any property given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage at or before or after the marriage as consideration for the marriage of the said parties would become dowry. In other words, the property so as to constitute 'dowry' within the meaning of the Act must be given or demanded "as consideration for the marriage".

45. Thus, there are three occasions relating to dowry. First is before the marriage; second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But, the crucial words are "in connection with the marriage of the said parties". In other words, the property referable is relatable to the consideration of the marriage.

46. It is true that voluntary presents or customary payments in connection with birth of a child or other ceremonies which are prevalent in different societies are not enveloped within the ambit of " dowry", as the same are given not as a consideration for marriage but out of love, affection or regard. Hence, the dowry mentioned in Section 3 04-B should be any property or valuable security given or agreed to be given at or before or after the marriage as a consideration for the marriage.
47. In this case, it is the specific evidence of P.Ws.1,2,3 and 5 that the accused persons demanded Thalai Pongal Seervarisai (first Pongal dowry after marriage). Exs.P2 and P3, the letter sent by the deceased to P.W.1 also would clearly reveal that Thalai Pongal Seervarisai, such as cow, goat and TVS 50 were not given as agreed upon on demand and therefore, she was being constantly tortured and harassed at the cruel hands of the accused. The Pongal Seervarisai, that too Thalai Pongal Seervarisai cannot be termed to be a customary payment in connection with birth of a child or other ceremonies, on the other hand, Thalai Pongal Seervarisai would relate to the first year Pongal dowry after marriage. In other words, this dowry was demanded as Thalai Pongal dowry in connection with the marriage held one year before or as a consideration for the marriage held earlier. Therefore, the materials would certainly attract the ingredients of definition of 'dowry'.

48. Since the cause of death of a married woman was to occur not in normal circumstances but as a "dowry death", for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband's house, the deeming clause under Section 113-B of the Evidence Act has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost.

49. In this context, it would be relevant to refer to the observations made by the Supreme Court in (AWAN KUMAR v. STATE OF HARYANA (19 98 S.C.C.(Cri) 740). The Apex Court while dealing with the deeming clause, would observe as follows:
"In cases of dowry deaths, circumstantial evidence plays an important role and inference can be drawn on the basis of such evidence. This could be either direct or indirect. It is a matter of inference, when persistent demands for TV and scooter are made from the bride after marriage or from her

parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B I.P.C. The Court must adopt that construction which, "suppresses the mischief and advances the remedy". The earlier law was not sufficient to check dowry deaths. Therefore, the stringent provisions were brought in, so that person committing such inhuman crimes on married woman should not escape, as evidence of a direct nature is not readily available. Hence stringent provisions were brought in by shifting the burden onto the accused by bringing in the deemed clause. According to the Explanation to Section 113-B, which was brought in by the Act 43 of 1986, such death is on account of dowry death. Thus the burden, if at all, is on the accused to prove otherwise."

50. In the light of the above observations, it is clear that once the prosecution has established that the deceased was harassed over the dowry demand soon before her death and due to the said harassment and torture, the death of the deceased occurred otherwise than under normal circumstances, it shall be presumed that it was dowry death caused by the accused as provided under Section 113-B of the Evidence Act, unless the same has been rebutted by the accused by placing materials to prove otherwise.

51. Let us now deal with the question whether there is any material with reference to the said torture soon before her death.

52. The occurrence took place on 9.11.1998. The deceased earlier sent letters Exs.P1 to P3 to P.W.1 mentioning dowry torture, asking him to come and take her back. The postal seal of the inland letter Ex.P1 would reveal that it was posted on 25.8.1998 at the husband's place and the same was received by P.W.1 on 27.8.1998 at Woraiyur address. Accordingly, on receipt of the letter, P.Ws.1, 2 and others went to the house of the accused in a car and made fervent attempt to take her to their place in order to save her from the further torture. However, the accused did not allow her to go with them. In fact, the evidence is that when she got into the car, A1 husband and A3 mother-in-law caught hold of her by tuft and pulled her down from the car. In view of the above unpleasant situation, they had to go back without the deceased. Thereafter, the unfortunate occurrence took place nearly one month later.

53. "Soon before" is a relative term which is required to be considered under specific circumstances of each case. The term "soon before" is not synonymous with the term "immediately before". These words would imply that the interval should not be too long between the time of making the statement and the death. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. The phrase "soon before her death" is an elastic expression. It can refer to a period either immediately before her death or within a few days or even a few weeks before it. These principles have been laid down in KANS RAJ v. STATE OF PUNJAB (2000 S.C.C.(Cri)935).

54. In the light of the above facts in this case, there is no

difficulty in holding that the deceased was subjected to torture and harassment at the hands of the accused persons "soon before her death" and as such, the death of the deceased is a dowry death as contemplated under Section 304-B I.P.C.

55. Sections 304-B and 498-A deal with two distinct offences. But, it is noticed that "cruelty" is a common essential to both sections. In Explanation to Section 498-A, the meaning of "cruelty" is given. There is no such explanation in Section 304 But, having regard to the common background to these offenes, we have to take that the meaning of "cruelty or harassment" will be the same as found in the explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Section 304-B deals with "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498A. Therefore, it is to be held that both the offences, namely Sections 304-B and 498-A I.P.C. are made out.

56. As held in SHANTI v. STATE OF HARYANA (1991 S.C.C.(Cri) 191), a person charged under Sections 304-B and 498-A I.P.C. can be convicted under both the sections, but no separate sentence need be awarded under Section 498-A in view of the substantive sentence being awarded for the major offence under Section 304B.

57. Let us now deal with the offence under Section 302 I.P.C. under which the first accused has been convicted.

58. According to the counsel for the appellants, the opinion Ex.P10 given by P.W.9 Doctor that the deceased died due to the injuries in the small intestines cannot be accepted, in view of the fact that P.W.9 Doctor himself would admit in the cross-examination, that there were some symptoms for suicide and as such, the first appellant(A1) cannot be convicted for the offence under Section 302 I.P.C., in the absence of any direct evidence to show that he only caused the death of the deceased.

59. It is true, as correctly pointed out by the counsel for the appellants, that there is no direct evidence for murder. But as noted above, it is admitted that both A1 and the deceased were living together under the same roof. When P.Ws.1,2,3 and 5 went to the village on receipt of the information about the death of the deceased, they found the body of the deceased seated in a chair in the pial of the house of the accused. Nobody was available near the body of the deceased. All the three accused were not found nearby. According to these witnesses, neighbours could not give any clue about their whereabouts. According to them, they found injuries on one portion of the neck and on both the legs.

60. P..W.9 post-mortem Doctor would state in the post-mortem certificate Ex.P8 that in small intestines, in various places for about 2 feet in length is blackish in colour. He also found abrasion with contusion on the middle of right side neck up to mid line on the anterior aspect and lacerated wound on the left leg lateral aspect above the left ankle. According to the Doctor, the deceased died due to the injuries in the small intestines. When

the Doctor P.W.9 was examined, he specifically deposed that blackish colour found on intestines were injuries and only due to the said injuries, the deceased died.

61. In order to verify whether the death was due to some other reason, the viscera and hyoid bone were sent for chemical examination. After receipt of the reports, the two Doctors, P.W.9 and another Doctor who conducted post-mortem, gave joint final opinion In Ex.P10 that the injuries in the small intestines resulted in the death of the deceased. According to the Doctor P.W.9, these injuries could have been caused by kicking or trampling. He also gave a definite opinion in the chief examination that these injuries could not have been caused by a lady who hanged herself by means of a saree. Though it was elicited in his cross-examination that abrasion on the neck and the tongue inside the mouth and froze in the mouth could also be symptoms for hanging, P.W.9 would be definite in his evidence that it is not a case of hanging or suicide, but it is a case of homicide.

62. Modi in the book "Medical Jurisprudence" 22nd Edition, at page 270, while dealing with case in which death was caused by hanging, would observe as follows:

"In India, it is a common practice to kill a victim, and then to suspend the body from a tree or a rafter to avert suspicion. The following are the symptoms for the suicidal hanging:

1) Face-Usually pale and petechiae rare.
2) Saliva-Dribbling out of the mouth down on the chin and chest.
3) Neck-Stretched and elongated in fresh bodies.
4) External signs of asphyxia, usually not well marked.
5) Bleeding from the nose, mouth and ears very rare.
6) Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.
7) Abrasions and ecchymoses round about the edges of the ligature mark, rare.
8) Subcutaneous tissues under the mark-White, hard and glistening.
9)Fracture-dislocation of the cervical vertebra--
Common in judicial hanging.

63. Most of the symptoms were absent in this case. Furthermore, as per the observation mahazar, the height between the ground and the rafter is only 7 feet. The height of the deceased is 5 feet. Inside the house, there are a cot, a steel almirah and a grider. Unless there is a stool or a chair, the deceased would not hang herself by tying the rope with the rafter. Admittedly, stool or chair was not available. It is not known whether rope or saree or some other thing had been used for tying her neck. Though it is stated by D.W.1 and in Ex. D1, the statement of Raman given to P.W.10 that they found the deceased hanging from the rafter, no reference is made in the deposition of D.W.1 or in the statement of Raman (Ex.D1) that saree or rope was found available inside the house. All these circumstances put together

would indicate that the deceased would not have committed suicide and as such, the theory of suicide has to be completely ruled out. In this fact situation, the definite opinion given by P.W.9 Doctor that it was not a case of suicidal hanging, but it was a case of homicide, would assume significance. Hence, the conten tion of the counsel for the appellants that it was a case of suicide is to be rejected.

64. However, it is submitted by the counsel for the appellants that even assuming that the death was homicide and the same was due to those injuries,as per the medical testimony, there is no evidence to show that A1 has caused those injuries, which resulted in the death of the deceased.

65. This argument, in our view, also would lack substance. It is a well established rule that once the prosecution established that both the accused and the deceased were staying under one roof and during that period, the deceased died due to the injuries sustained by her, it is for the accused to establish as to how those injuries were sustained.

66. The burden of proving the plea that the wife died in the manner alleged by the husband lay upon the husband. This is clear from the provisions of Sections 103 and 106 of the Evidence Act.
Section 103 would provide thus:
"The burden of proof as to any particular fact lies on that person who wishes the Court to belief in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."
Section 106 provides as follows:
"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

67. There are a number of decisions of the Supreme Court, interpreting the above sections wherein number of guidelines for evaluating this aspect have been given. The decisions are as follows:
1) SHAMBHU NATH MEHRA v. STATE OF AJMER (A.I.R.1956 S.C.404);
2) SAWAL DAS v. STATE OF BIHAR (AIR 1974 S.C.778);
3) SUBEDAR TEWARI v. STATE OF U.P (1989 S.C.C.(Cri) 218);
4) GANESHLAL v. STATE OF MAHARASHTRA (1993 S.C.C.(Cri) 435);
5) STATE OF TAMIL NADU v. MUNIAPPAN (A.I.R.1998 S.C.504);
6) JOSEPH v. STATE OF KERALA (2000(2) L.W. (Crl.) 783);
7) STATE OF MAHARASHTRA v. SURESH (2000 S.C.C. (Cri) 263);
8) STATE OF W.B. v. MIR MOHAMMAD OMAR (2000 S.C.C.(Cri) 1516);
9) RAM GULAM CHOUDHARY v. STATE OF BIHAR (2001 S.C.C. (Cri) 15 46);
10) SAHADEVAN v. STATE (2003 S.C.C.(Cri) 382);
11) HIRA LAL & ORS. v. STATE(GOVT.OF NCT) DELHI (2003(5) Supreme 112).

68. The guidelines are:
A) Section 106 applies only where a fact relating to the actual commission of offence is within the special knowledge of the accused. The burden of proving a plea specifically set up by an accused, which may absolve

him from criminal liability, certainly lies upon him.

B) It has become obligatory on the part of the accused to satisfy the court as to how, where and what manner the deceased parted company with them. This is on the principle that if a person is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which he parted company.

C) The subsequent conduct of the accused lends assurance to the homicide theory. The conduct of absconding of the accused is a factor which can be used for cementing the prosecution case.

D) It is not as if homicide is completely ruled out by the doctors. The doctors' evidence must be take in conjunction with all the other circumstantial evidence on record.

E) Incriminating links of facts should have been explained only by the accused and nobody else as they are exclusively within the knowledge of the accused. The Courts have, from the falsity of the defence plea and false answers given to the Court when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances to connect the accused with the crime.

F) The false plea of suicide is yet another relevant fact. When the death had occurred in their custody the accused is under an obligation in Section 313 Cr.P.C. statement at least to give a plausible explanation for the cause of death. In the absence of the plausible explanation, the facts are held to be inconsistent with the innocence, but consistent with the hypothesis that the accused is a prime culprit in the commission of murder of his wife.

G) If the accused declines to tell the criminal Court that his knowledge about the concealment of the thing was on account of some reason, the criminal Court can presume that it was concealed by the accused himself.

If he chooses to refrain from telling the Court as to how else he came to know of it, the presumption is a well-justified course to be adopted in criminal Court that the concealment was made by himself.

H) Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused, but the section would apply to cases like the present, where the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding death. The accused persons by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

(I) Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that

a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

J) Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish the facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within the knowledge of the accused.

K) When it is proved to the satisfaction of the Court that the victim was abducted by the accused persons and they took him out of the area, the accused alone knew what happened to him until he was with them. If he is found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to the victim at least until he was in their custody.

69. On going through the guidelines referred to above, it is clear that once prosecution has established that there was a misunderstanding between the husband and wife and the deceased was unhappy with the husband and both of them were staying together and during that period, she died due to the injuries inside the house, then the accused has to satisfactorily explain as to how those injuries were caused resulting in her death and in the absence of any explanation for those factors which are exclusively within the special knowledge of the accused, it has to be presumed that he had caused her death.

70. In this case, it is clear that the accused has not only failed to give proper explanation as to the manner of death of the deceased, but also has given inconsistent versions which are found to be false. This could be demonstrated in the following paragraphs.

71. As noted above, the defence theory of the accused is that the deceased committed suicide and it is not a case of homicide and the same was informed to her parents immediately through D.W.1 Balamurugan. According to D.W.1, he went to Woraiyur as instructed by A1 and informed the parents of the deceased that the deceased died by committing suicide. But, as per the evidence of P.Ws.1 and 2, on 9.11.1998 at about 10.45 p.m., two persons belong to Anbil Mangammalpuram came to Woraiyur village and informed about the death of the deceased and when they were enquired about the cause of death by P.Ws.1 and 2 and others, they simply went out without responding to the question. This aspect of the evidence spoken to by P.W.2, the mother of the deceased, has not been seriously challenged. As a matter of fact, the suggestion

regarding the theory of suicide had not been put in the crossexamination of P.W.2, mother of the deceased, P.W.3 Pakkirisamy, neighbour of P.W.1, P.W.5 Jothi, friend of P.W.1, who came to the scene village after receipt of the information about the death of the deceased. Similarly, the said suggestion was not put to P.W.10, the R.D.O., who conducted inquest and enquiry, P.W.12 Sub Inspector of Police, who conducted initial investigation and P.W.13 Inspector of Police and P.W.14 D.S.P., who conducted subsequent investigation. On the other hand, the categorical opinion given by P.W.9 Doctor is that it was not a suicide and it is a case of homicide. The Doctor would also state that the injuries in the small intestines could be caused by trampling and those injuries have caused the death and the suggestion to contra was emphatically denied. P.W.9 would further state that it is a clear case of homicide and the theory of suicide is completely ruled out.

72. If really it is a case of suicide, having decided to send D.W.1 to give information to the parents of the deceased regarding the suicide of the deceased, there was no reason as to why the accused have not given the information to village elders or V.A.O. or the nearest police station. Similarly, if the statement that the parents of the deceased came with weapons and created galatta in the village is true, why A1 to A3 had failed to inform about the same either to village elders or sought help from the police seeking protection?

73. According to A1 in his 313 Cr.P.C. statement, when the R.D.O's enquiry was conducted at about 1.00 p.m. on 10.11.1998, all the three accused were staying in the house situated in the corner of the street. If that was so, why they have not appeared before the R.D.O. for giving the truth and for seeking protection against the parents of the deceased?

74. Further, D.W.1 would state that he saw the dead body removed from the rafter inside the house. Admittedly, he was not present during the course of enquiry by P.W.10 R.D.O. He had not stated to R.D.O. that he went and informed the parents of the deceased that the deceased committed suicide. While P.W.10 was examined in the Court, it was elicited from him in the cross-examination that one Raman, the neighbour of the accused stated to him that he assisted in the removing the body hanging from the rafter. The said Raman's house is referred to in both the observation mahazar Ex.P5 and rough sketch Ex.P14. Though D.W.1 Balamurugan is claimed to be the neighbour of the accused, his house has not been referred to in these documents. The accused have not chosen to examine the said Raman as a defence witness, but opted to examine Balamurugan (D.W.1), who did not admittedly appear before the R.D.O. for enquiry.

75. In the observation mahazar Ex.P5, it is noticed that there is a door in the hut in which both the accused and his wife stayed facing south side just opposite to the tiled house where A2 and A3 stayed. If actually the deceased wanted to commit suicide, she would have locked the door from inside and then hanged herself. According to the first accused, he went for shopping and then came back and found the deceased hanging inside the house. If the door was locked, how he gained entry into the house? If the door which was locked from inside was broke open, the observation mahazar would contain the

reference about those broken door or broken lock. Such thing has not been mentioned. Why no questions on this aspect have been put to P.W.14 who came to the scene at 10.00 a.m. on 10.11.1998 and prepared observation mahazar Ex.P5 and rough sketch Ex.P14 about this aspect? Thus, so many questions are unanswered. So, on that score also, the suicide theory projected by the accused has to be rejected.

76. Let us now come to the aspect of the abscondance of the accused for a long period.

77. D.W.1 Balamurugan would state that as soon as he informed about the death of the deceased at Woraiyur, they got angry and they instructed others to take aruval, stick, etc. and therefore, he immediately rushed back to village and informed this to A1 and hence, out of fear, even before the arrival of the parents of the deceased, A1 alone went out of the village and absconded but A2 and A3 were at the scene throughout. On the contrary, while A1 was questioned under Section 313 Cr.P.C., he stated for question No.9 that he was sitting near the dead body of the deceased throughout. In the same way, A2 and A3 would state in Section 313 Cr.P.C. questioning that they had not gone anywhere and they were sitting near the body of the deceased. In the written statement filed by A1, he would state that all the three accused were there near the body of the deceased and on 9.11.1998 night, the brothers of the deceased came to the scene village and created a galatta with weapons and therefore, out of fear, A1 to A3 went and stayed in the house situated in the corner of the street. According to P.Ws.1, 2, 3 and 5, when they went to the village, no accused was available near the body of the deceased or inside the house and they could not get any clue about their whereabouts from the villagers. On the contrary, a suggestion was put to P.W.1 that P.W.1 and his sons and hirelings came to the village and picked up quarrel with the accused and therefore, all the three accused on fearing danger to their lives left the scene place and stayed in a nearby place. Strangely, this suggestion was never put to P.Ws.2, 3 and 5. P.W.10 R.D.O. came to the scene next day at about 1.00 p.m. and conducted inquest over the dead body of the deceased and enquired P.W.1, P.W.2 and other local villagers. Even at that time, according to P.W.10, the accused 1 to 3 were not available for enquiry. On that basis, P.W.10 sent a report Ex.P11 to police to take action against the accused concerned by continuing the investigation. Further, Ex.P12, the inquest report contains the signatures of five Panchayatdars belong to the same village who stated to R.D.O. P.W.10 that immediately after the death of the deceased, A1 to A3 had disappeared from the scene and they could not know about their whereabouts. Thus, the statement of A1 to A3 that they were available in the village is false, since D.W.1 himself would state that A1 had absconded from the village out of fear. The statement of A2 and A3 that they were there in the scene throughout also has been proved to be false, since they were not available for the enquiry as per the reports Exs.P11 and P12 and the evidence of P.W.10 R.D.O.

78. According to P.W.13, the Inspector of Police, A1 to A3 were absconding from 9.11.1998 and they were arrested only on 2.2.1999. This was not challenged. It is not the case of defence that in the meantime, they were arrested and illegally detained. As such, no explanation whatsoever from the

accused as to why they had to abscond themselves for this long period, nearly for three months. On the other hand, as noted above, they gave a statement under Section 313 Cr.P.C. that they were near the dead body and they were in the village throughout which had been found to be false through other materials.

79. It is the case of the defence that the deceased threw sorcerous things such as copper plate, viboothi and lemon on the street and the village women objected to the same and abused her in insulting manner and that was the reason for her committing suicide. Though the suggestion to this effect has been put to P.W.1 alone, the same has not been substantiated by examining any woman in the village to speak about the said incident. As indicated above, this alleged incident has never been suggested to other witnesses, namely P.W.2, P.W.3, P.W.4 and P.W.10. If such an incident had taken place, naturally, villagers who were examined by P.W.0 R.D.O. on 10.11.1998 would have mentioned to him. If that was so, the same would have been referred to in Exs.P11 and P12. On the other hand, Ex.P12 would show that the Panchayatdars who have signed in Ex.P12 had specifically told P.W.10 that the deceased was used to be tortured by the accused demanding the Pongal Seervarisai and after death of the deceased, all the accused went away from the village.

80. According to the defence counsel, Exs.P1 to P3 letters sent by the deceased to P.W.1 about the torture meted out to her at the hands of the husband, have been fabricated belatedly, since the said documents were not produced either to P.W.12 Sub Inspector of Police to whom the complaint was given or to P.W.10, the R.D.O. and the same were produced only 10 days later to P.W.14 D.S.P.

81. This submission lacks substance, in view of the fact that about these letters, a mention has been made in Ex.P4, the complaint itself which was given by P.W.1 to P.W.12 on 10.11.1998. Further, no suggestion had been put to P.W.14 who recovered Exs.P1 to P3 from P.W.1 that the same had been fabricated. In fact, those documents were recovered by P.W.14 D.S.P. who conducted investigation, from P.W.1 only on the basis of his information about the letters given in Ex.P4.

82. Though the documents Exs.P1 to P3 have not been sent for the opinion of Handwriting Expert, on comparison, on the face of it, it is clear that Ex.P2, which is in a pencil writing and Ex.P3, a writing in xerox copy would tally with the writings in Ex.P1 containing the particulars of the addressee. Therefore, there cannot be any doubt in the fact that those letters were written by one and the same person and the same was posted on 25.8.1998 from Anbil Mangammalpuram village to P.W.1 to his address at Woraiyur by the deceased as stated by him, particularly when those documents have been mentioned in Ex.P4 complaint and the same were recovered from him by P.W.14 D.S.P.

83. Once the conclusion is reached that theory of hanging and suicide are to be excluded and the death of the deceased is established to be

homicidal beyond reasonable doubt, the identity of the assassin does not present much difficulty. The evidence is conclusive on the point that there was no other inmate in the house except the husband and this was not disputed by the defence. If therefore the deceased has died a homicidal death none but her husband could have been the assassin. Thus, it has to be held that the offence under Section 302 I. P.C. also is made out against A1.

84. Apart from Section 302 I.P.C., A1 has been convicted for the offence under Section 302 read with 201 I.P.C. A2 and A3 though acquitted in respect of the offence under Section 302 I.P.C., have been convicted for the offence under Section 302 read with 201 I.P.C. According to third charge, all the three accused caused disappearance of the evidence of murder and made it appear as if the deceased committed suicide by suspending her by putting a saree over her neck and tying with the rafter. For this charge, we find that there is no sufficient materials. Though Ex.D1 and D.W.1 would state that they saw that the body was found hanging inside the house, that is not enough to hold that A1 to A3 took the body and suspended the same from rafter to make it appear as suicide. Ex.D1 cannot be acted upon, in view of the fact that the author of Ex.D1, namely Raman has not been examined. D.W.1 Balamurugan would state that the body was removed from the rafter. He had not given such a statement to R.D.O. P.W.10. Further, we have given several reasons to disbelieve his evidence in the earlier paragraphs. Therefore, the evidence of D.W.1 examined on behalf of the accused to establish that it was a case of hanging would not be taken into consideration to hold that the accused committed the offence under Section 302 read with 201 I.P.C. Even according to prosecution, when P.Ws.1, 2, 3 and 5 along with others came to the village of the accused, they found the dead body of the deceased seated in a chair with external injuries on the body. At that time, the accused were not available. Under those circumstances, it cannot be said that there are sufficient materials to show that all the accused made it appear as if it was a case of suicide. As a matter of fact, Ex.D1 would show that A1, A2 and the said Raman removed the body from the rafter. If the act of suspending the body has been done by the accused to make it appear as a case of suicide, they would have not removed the body of the deceased from the rafter till the parents of the deceased or police come to the scene. Therefore, the offence under Section 302 read with 201 is not made out. Consequently, the accused are liable to be acquitted in respect of the offence under Section 302 read with 201 I.P.C.

85. A2, the father-in-law along with A1 husband and A3 mother-inlaw has been convicted for the offences under Sections 498-A and 304-B I.P.C. P.W.1 would give various details of the dowry torture. Though he has given specific overt acts to A1 and A3, he has not mentioned anything about the actual part played by A2 who is the father-in-law of the deceased. P.W.1 would speak about the beating and torture by A1 both in the house of P.W.1 and in front of the employer of A1. He would also state that on receipt of the letters Exs.P1 to P3, he went to the village of the accused and made an attempt to take her to their place and at that time, A1, the husband and A3, the mother-inlaw, when the deceased got into the car, have forcibly pulled her out from the car. In these instances, no part was attributed to A2.

86. The main evidence which prosecution relies upon is Exs.P1 to P3 letter written by the deceased to her parents. In that letter, she specifically alleged about the torture at the hands of A1 and A3 alone. She did not refer to A2's part. Therefore, it cannot be said that there are sufficient materials to convict A2 for the offence under Sections 498-A and 304-B I.P.C. In such circumstances, A2 is liable to be acquitted in respect of these offences giving the benefit of doubt.

87. To sum up:
(i) The conviction and sentence imposed on the first accused by the trial Court for the offences under Sections 302, 498-A and 304-B I.P.C. is confirmed. The conviction and sentence imposed on the first accused for the offence under Section 302 read with 201 I.P.C. is set aside and he is acquitted of this charge and the fine amount for this offence, if paid, shall be refunded to A1.
(ii) The conviction and sentence imposed on the second accused for the offences under Sections 498-A, 304-B and 302 read with 201 I.P.C. is set aside and he is acquitted of all these charges. The fine amounts, if paid, shall be refunded to A2 and the bail bond executed by him shall stand cancelled.
(iii) The conviction and sentence imposed on the third accused for the offences under Sections 498-A and 304B I.P.C. is confirmed. The conviction and sentence imposed on the third accused for the offence under Section 302 read with 201 I.P.C. is set aside and she is acquitted of this charge and the fine amount for this offence, if paid, shall be refunded to A3. Since A3 is on bail, the trial Court is directed to take steps to secure her custody to undergo the remaining period of sentence.
(iv) Thus, the appeal is partly allowed.

88. Before parting with this case, we cannot but express our great anguish over the instances of bride killing which are alarmingly on the increase. Though the framers of law have enacted frequent legislations to eradicate evil of dowry, we wonder how 'dowry' has been raising its ugly head again and again, endangering the very existence of the institution of marriage.

89. It is horrible to see that in the present case, even after the birth of a male child, the deceased woman aged about 20 years, within two years after the marriage, was tortured and stamped to death by trampling with the legs of her husband as the dowry demand was not met.

90. It is virtually a matter of shame that in these days, indiscriminate attacks and abnormal violence against married women are on the higher side. Law of course to some extent would punish offenders, but is doing little to curb this type of utterly obnoxious dowry torture.
91. Though it is condemned by the society, it is perpetuated by the same society in the name of social customs and prestige. We come across so many cases of late, that if the wife fails to turn up to the expectation of the husband and his parents, they treat the wife as a cattle or as a combustible material.

92. Every marriage ordinarily involves a transplant. When a tender plant is shifted from the place of origin to a new setting, great care is taken to ensure that the new soil is suitable. When a girl is transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. When the bride is received in the new family, she must have a feeling of welcome. The elders in the family including the mother-in-law, are expected to show her the way. The husband has to stand as a mountain of support ready to protect her and espouse her cause.
93. It cannot be forgotten that men and women in the human creation are complementary to each other. It is only when a man and a woman are put together, a complete unit is formed.

94. It is a disturbing phenomenon that has recently arisen that instances of dowry deaths are the daily news. If society should be ridden of this growing evil, it is imperative that the Court must deal with the offenders most severely. But, the legislation by the framers of law and execution by the Court alone would not suffice to eradicate this increasing evil.

95. The appropriate remedy, in our view, would be that the Government shall ensure that the women are given compulsory education and economic independence through suitable legislation. Once education and economic independence for women are achieved, the evil of dowry would die a natural death.

Index: Yes
Internet:Yes

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To

1.The II Additional Sessions Judge, Tiruchirappalli.
2.The Superintendent, Central Prison, Trichy.
3.The Public Prosecutor, High Court, Madras.
4.The Inspector of Police, Lalgudi PoliceStation, Trichy District.
5. The District Collector, Trichy.
6. The Director General of Police, Chennai.